

22 JUN 2007



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23409
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In re Application of :
ZANGARY et al :
U.S. Application No.: 10/552,205 :
PCT No.: PCT/US04/10577 :
Int. Filing Date: 07 April 2004 :
Priority Date: 07 April 2003 :
Attorney Docket No.: 047177-9121-US01 :
For: MODULAR REFRIGERATION UNIT :

DECISION

This decision is in response to applicants' "Petition Under 37 C.F.R. 1.182" filed on 11 May 2007 which is treated under 37 CFR 1.181. No fee is required.

BACKGROUND

On 06 October 2005, applicants submitted papers to enter the national stage of PCT/US04/10577. These papers included a declaration signed by four of the five named inventors.

On 31 May 2006, the DO/EO/US mailed a Notification of Acceptance of Application Under 35 U.S.C. 371 and 1.495 (Form PCT/DO/EO/903) and filing receipt indicating that the date of receipt of 35 U.S.C. 371(c)(1), (c)(2) and (c)(4) requirements and date of completion of all 35 U.S.C. 371 requirements is 06 October 2005.

On 12 February 2007, a Notice of Allowability and Notice of Allowance was mailed.

On 11 May 2007, applicants filed the subject petition which was accompanied by, *inter alia*, a Request for Continued Examination (RCE).

DISCUSSION

A review of the subject application shows that an oath or declaration in compliance with 37 CFR 1.497(a) and (b) was not submitted on 06 October 2005. The declaration filed with the national stage papers was not signed by all of the inventors.

Accordingly, the Form PCT/DO/EO/903 mailed 31 May 2006 was sent in error, and is hereby **VACATED**.

Applicants' reference to 37 CFR 1.53(b) for the filing date in the petition is inappropriate. The above-captioned application was filed pursuant to 35 U.S.C. 371, not 111(a). Section 1896 of the MPEP explains the differences and states:

The filing date of a 35 U.S.C. 111(a) application is the date when the USPTO receives a specification as prescribed by 35 U.S.C. 112 containing a description and at least one claim, and any required drawings. See 37 CFR 1.53(b).

The filing date of a PCT international application is the date applicant satisfies Article 11 requirements, i.e., includes a description, a claim, names at least one applicant who is a resident or national of a PCT Contracting State, filed in the prescribed language, and designates at least one Contracting State. See MPEP § 1810. By virtue of 35 U.S.C. 363¹, the U.S. filing date of an international application that designates the United States is, for most legal purposes, the international filing date. See MPEP § 1893.03(b).

The "Filing or 371(c) Date" noted in PAIR and the Bib Data Sheet will change in the above-captioned application as this date reflects the date of completion of all 35 U.S.C. 371(c) requirements. 35 U.S.C. 371(c)(4) requires applicants to provide an acceptable oath or declaration. This change, however, will not affect applicants' legal rights. The international filing date will remain the same.

CONCLUSION

Applicants' petition under 37 CFR 1.181 is GRANTED.

This application is being forwarded to the National Stage Processing Division of the Office of PCT Operations for the mailing of a Notification of Missing Requirements Under 35 U.S.C. 371 in the United States Designated/Elected Office (DO/EO/US) (Form PCT/DO/EO/905).


James Thomson
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¹ 35 U.S.C. 363 provides that:

An international application designating the United States shall have the effect, from its international filing date under Article 11 of the treaty, of a national application for patent regularly filed in the Patent and Trademark Office except as otherwise provided in section 102(e) of this title.

10/552,205

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